

REMARKS OF HONORABLE HENRY A. WAXMAN

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THE CABLE-COPYRIGHT COMPROMISE: CAN IT SURVIVE?

AT THE OUTSET, I MUST EXPRESS MY ADMIRATION AND GRATITUDE TO BOB KASTENMEIER AND TOM RAILSBACK. THEY HAD THE COURAGE TO FACE AND TENTATIVELY RESOLVE ONE OF THE MOST DIFFICULT AND COMPLEX ISSUES BEFORE US: THE CONTROVERSY SURROUNDING CABLE-COPYRIGHT PAYMENTS. THEY DESERVE THE HIGHEST PRAISE FOR THEIR EFFORTS TO SUCCESSFULLY BRING ALL SIDES TOGETHER.

THE APPROVAL OF HR 5949 BY THE HOUSE JUDICIARY COMMITTEE LAST WEEK WAS AN IMMENSE ACHIEVEMENT. THERE WERE A THOUSAND WAYS THE COMPROMISE COULD HAVE UNRAVELLED -- AND I THINK THE COMMITTEE WENT THROUGH 999 OF THEM -- BARELY ONE THAT COULD HAVE HELD.

I BELIEVE IT IMPORTANT FOR THE COMMERCE COMMITTEE TO PROMPTLY REVIEW THIS LEGISLATION, TO HEAR OUT THE VIEWS OF ALL AFFECTED PARTIES, AND TO FOCUS OUR DELIBERATIONS ON CEMENTING THE

ACCORD THAT HAS BEEN REACHED,

THE CABLE-COPYRIGHT ISSUE HAS TROUBLED ME GREATLY. IT HAS
PITTED WHAT I HAVE LONG CONSIDERED TO BE TWO NATURAL ALLIES --
PROGRAM PRODUCERS AND CABLE -- AGAINST EACH OTHER.

IT HAS POSED AN UNATTRACTIVE CHOICE BETWEEN DIVERSITY
(BECAUSE OF CABLE'S ABILITY TO DELIVER AN ABUNDANCE OF PROGRAMMING)
AND EQUITY TO PRODUCERS THROUGH FAIRER COPYRIGHT PAYMENTS (WHICH
MAY FORCE CABLE TO CUT BACK ON PROGRAM PURCHASES).

AND ONCE AGAIN, WE ARE CONFRONTED WITH A CONTROVERSY WHOSE
ROOTS LIE IN THE VERY TECHNOLOGICAL REVOLUTION WE WISH TO HARNESS
FOR THE BENEFIT OF THE AMERICAN PEOPLE.

AS IN THE BETAMAX CASE, SOPHISTICATED TECHNOLOGIES THREATEN THE VERY PROTECTION OF BASIC PROPERTY RIGHTS -- RIGHTS ACKNOWLEDGED DIRECTLY IN THE CONSTITUTION ITSELF.

THE DILEMMA BETWEEN ACCESS AND EQUITY, BETWEEN DEMAND FOR PROGRAMMING AND ITS CONTINUED AVAILABILITY, IS INCREASING IN BOTH INTENSITY AND SCOPE -- FROM XEROX, TO CABLE, TO BETAMAX, TO THE EARTH STATION.

I GREATLY FEAR FOR THE ABILITY OF THE LEGISLATIVE PROCESS TO COPE WITH THESE STRAINS, FOR THE SIMPLE REASON THAT TECHNOLOGICAL BREAKTHROUGHS OCCUR MUCH MORE RAPIDLY THAN LEGISLATIVE BREAKTHROUGHS.

IT TOOK LESS THAN 4 YEARS FOR THE 1976 CABLE-COPYRIGHT AGREEMENT TO BEGIN TO DECAY. BY LAST YEAR, IT WAS APPARENT THAT EITHER A

NEW COMPROMISE WAS TO BE REACHED, OR THE COPYRIGHT ROYALTY TRIBUNAL WAS TO BE DISMEMBERED.

THERE ARE EXCEPTIONALLY COMPELLING ARGUMENTS ON BOTH SIDES.

FROM CABLE'S PERSPECTIVE, THE COPYRIGHT POOL UNDER THE COMPULSORY LICENSE HAD EXCEEDED ALL EXPECTATIONS, GROWING TO OVER \$20 MILLION BY 1931. THE INDUSTRY WAS PAYING MORE FOR PROGRAMMING THAT COMPRISED AN EVER -DECLINING SHARE OF ITS OVERALL SERVICES. IF THERE WERE A FREE MARKET IN COPYRIGHT NEGOTIATIONS, CABLE ARGUED, IT WOULD BE A LOGISTICAL NIGHTMARE -- AN UNFAIR AND UNNECESSARY BURDEN.

FROM THE PERSPECTIVE OF PROGRAM PRODUCERS, THE CURRENT SYSTEM WAS NOTHING LESS THAN A GOVERNMENT-IMPOSED PRICE-FIXING SCHEME

THAT BENEFITTED A MULTI-BILLION DOLLAR INDUSTRY -- CABLE -- AT
THE EXPENSE OF THE CREATIVE COMMUNITY.

I TEND TO SUSPECT THAT THE HEART OF THE ISSUE FOR PROGRAM
PRODUCERS WAS NOT HOW MUCH WAS ACTUALLY BEING PAID BY CABLE --
ALTHOUGH THAT WAS SURELY A SUBSTANTIAL CONCERN -- BUT THE FACT
THAT THE REVENUES DID NOT FLOW FROM FREE-AND-CLEAR, GIVE-AND-TAKE
NEGOTIATIONS WITH CABLE. IT WAS THE METHOD OF THE MADNESS THAT
WAS SO TROUBLING.

IT SEEMS TO ME THAT THERE ARE BUT TWO CHOICES FOR CONGRESS:
TO ADJUST THE EXISTING MECHANISM OR TO JETTISON THE WHOLE THING.
GIVEN THE POWERFUL CONSTITUENCIES INVOLVED, THERE REALLY IS ONLY
ONE POLITICAL REALITY: TO REACH A REASONABLE COMPROMISE. NO ONE
ON COMMERCE, AND NO ONE ON JUDICIARY, WISHES TO PRESIDE OVER A

BATTLE BETWEEN CABLE, PRODUCERS, AND BROADCASTERS.

HR 5949 MEETS THE TEST OF POLITICAL REALITY.

FOR CABLE, BOTH THE COMPULSORY LICENSE AND ACCESS TO DISTANT
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FOR BROADCASTERS, SYNDICATED EXCLUSIVITY CAN BE REINSTATED,
AND THE "MUST CARRY" PROVISIONS ARE RETAINED.

FOR PROGRAM PRODUCERS, THE RATES PAID BY CABLE WILL CONTINUE
TO INCREASE IN THE FUTURE.

ALTHOUGH THIS COMPROMISE CAN BE SAID TO MEET THE LEGITIMATE INTERESTS AND GENERALLY RESOLVE THE CONFLICTING CLAIMS OF ALL INVOLVED, I WONDER WHETHER IT WILL, INDEED, ENDURE.

WE ARE LAWMAKERS -- NOT ENGINEERS. AS THE EMERGENCE OF "SUPERSTATIONS" DISRUPTED THE 1976 AGREEMENT, NEW AND UNANTICIPATED DELIVERY SERVICES MAY EMERGE TO DISRUPT THIS ONE -- 2, 3, OR 5 YEARS FROM NOW. ONCE AGAIN, THE TECHNOLOGY MAY OUTRUN OUR ABILITY TO FAIRLY GOVERN ITS USE.

THE ADMINISTRATION HAS STATED ITS OPPOSITION TO THIS LEGISLATION. CONSISTENT WITH ITS BELIEF THAT THE GOVERNMENT SHOULD NOT INTERFERE WITH THE MARKETPLACE, THE JUSTICE DEPARTMENT HAS URGED ABOLITION OF THE TRIBUNAL AND THE COMPULSORY LICENSE FOR CABLE.

IT SEEMS TO ME THAT THE APPEAL OF DEREGULATION, OF THE FREE MARKET, IS GROWING, NOT DECLINING. THE NAB, OF COURSE, HAS BEEN IN THE FOREFRONT OF EFFORTS TO DEREGULATE BROADCASTING. YOU KNOW WHICH WAY THE WIND IS BLOWING.

ALTHOUGH HR 5949 MAY WELL REPRESENT THE POLITICAL IMPERATIVE OF THE MOMENT, I BELIEVE CABLE'S DAY OF RECKONING WITH THE FREE MARKET IS COMING, AND THAT THE INDUSTRY SHOULD BEGIN TO PREPARE ITSELF TO FACE UP TO IT.

ALTHOUGH I AM PLEASED TO LEND MY ASSISTANCE TO A COMPROMISE ENDORSED BY SO MANY, I DO NOT BELIEVE WE HAVE REACHED THE END OF OUR STORY, WITH EVERYONE LIVING HAPPILY EVERY AFTER.

I INTEND TO STAY TUNED.

THANK YOU